

REMARKS

The Applicants submit the following amendments and remarks in response to the Official Action mailed February 16, 2006.

As an initial matter, Examiner has noted that an application in which the benefits of an earlier application are desired, must contain a specific reference to the prior application in the first sentence of the specification pursuant to 37 C.F.R. 1.78(a)(2) and (a)(5). In response to this, Applicants have amended the first sentence of the present application to thereby properly claim priority. No new matter has been added to the application as a result of this amendment.

As requested by the Examiner, the lengthy specification has been checked to the extent necessary to determine the presence of all possible minor errors. Applicants are not aware of any minor errors included in the application.

CLAIMS REJECTION 35 U.S.C. §112

Claims 7-11 are rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In response to this rejection, Applicants have amended claim 7 so as to properly depend from claim 6. This was an oversight by the Applicants and thus, correction was warranted. No new matter has been added as a result of this amendment to claim 7.

CLAIM REJECTIONS 35 U.S.C. §102(b) - Marnay

Claims 1, 2, 12, 13, 16 and 17 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,314,477 to *Marnay*. The Examiner asserts that FIG. 1 of *Marnay* shows an

intervertebral spacer device with first and second baseplates (110, 120) that are articulatable relative to one another via surfaces 21 and 22. The Examiner also asserts that it can be seen that the baseplates include two pairs of engagement holes (115, 116, 125, 126) that are engageable with posts (812, 813, 822 and 823) on the distal end of the manipulation tool 80). As already stated, Applicants have amended claim 1 to include the recitation that a handle of the manipulation tool extends along the first axis and the engagement posts of the manipulation tool extend along second and third longitudinal axes, respectively. As included within claim 1 of the present application, the first longitudinal axis is substantially perpendicular to the second and third longitudinal axis. This recitation distinguishes the present invention over *Marnay* because *Marnay* is limited to teaching a manipulation tool that has posts that are substantially parallel to the handle of the tool. As shown in FIG. 10 of *Marnay*, posts 822, 823 always remain parallel to handle 820 and posts 812, 813 always remain parallel to handle 810. Further, posts 812, 813 although they may be angled a certain amount relative to handle 820, they cannot be substantially perpendicular. Thus, Applicants assert that claim amended claim 1, as well as its dependent claims are in condition for allowance over *Marnay*.

**CLAIM REJECTIONS 35 U.S.C. §102(e) - Wagner**

Claims 1-20 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,641,614 to *Wagner, et al.* The Examiner asserts that FIG. 40 shows an intertebral spacer device with first and second baseplates 602, 604 with three engagement holes 632 on one baseplate being separated from each other by a length. The Examiner also asserts that it can be seen that there are tools in the form of cams with posts 640,

650, 660 extending distally from the cams. Each of the posts being positionable in the engagement holes of the spacer. Applicants respectfully traverse the Examiner's rejection and submit that claim 1 was in condition for allowance and newly amended claim 1 remains in condition for allowance over *Wagner*.

Newly amended claim 1 as well as previously presented claim 1, includes the recitation that a manipulation tool has a pair of engagement posts. Thus, it is clear that a single tool has at least two engagement posts for engaging engagement holes of the intervertebral spacer device. This is contrasted with *Wagner*, which is limited to disclosing at best, a tool having a single engagement post. This is because as stated by the Examiner, there are tools in the forms of cams with a pair of posts 640, 650, 660, extending distally from each one. And as shown in FIG. 40, a single cam includes a single post. Thus, the Examiner is interpreting that the cams may be tools, but the cams lack the requirement of having two posts extending therefrom as included within claim 1 of the present application. Regardless, newly amended claim 1 also now includes the recitation that the manipulation tool has a handle extending along a first axis and the posts of the manipulation tool extend along second and third axes, wherein the first axis is substantially perpendicular to the second and third axes. It is clearly shown in FIG. 40 of *Wagner* that each cam and it's the post extends along the same axis in contrast to the present invention. Thus, Applicants assert that claims 1-20 are patentably distinct from *Wagner* and should be deemed to be in condition for allowance.

Applicants have added new and independent claim 21 to the present application. Claim 21 includes the recitation that the first and second holes of an intervertabral spacer device are positioned on the inner surface of either the first baseplate or the second baseplates and open ends of the respective holes face

towards the inner surface of the other of the first or second baseplate such that the holes confront the inner surface of the other baseplate. No new matter has been added to the application as a result of this addition to the claims on inner surfaces one. Neither *Marnay* nor *Wagner* disclose engagement holes on baseplates of an intervertebral spacer device wherein they face an inner surface of the other baseplate. *Marnay* is limited to disclosing holes which face 90° from an opposite baseplate as is *Wagner*. Thus, Applicants assert that newly amended claim 1 is also in condition for allowance and should be deemed patentable.

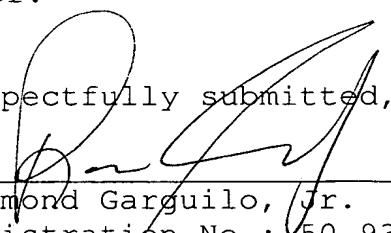
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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